

Whitelaw, Inc.
918 Cedar Knolls West
Cedar City, UT 84720

August 3, 2004

RECEIVED
TS AUG - 6 2004
WATER RIGHTS
SALT LAKE

Lee H. Sim
Assistant State Engineer
P.O. Box 146300
Salt Lake City, UT 84114-6300

Dear Mr. Sim:

As you suggested today on the telephone, I am sending you this letter to clarify and, hopefully, to resolve the issues raised in the Notice of Agency Action: Illegal Use of Water in Excess of Water Right, No. SEAA 1072, dated July 27, 2004.

I have been leasing and using 18 acre feet of irrigation water from Mr. Quincy E. Fortier for the past 10 years under annual temporary change applications. This year's Temporary Change Application, No. t28979, was approved on May 4, 2004. This application transferred only 5 of the 6 acre feet contained in Water Rights 71-3683 and 71-3900. The remaining 13 acre feet were transferred from 71-4349, and these do not appear to be an issue in the Notice of Agency Action.

This spring was no different than the past years. I called Mr. Fortier to see if he wanted to lease the same 18 acre feet to me. He did, so I sent him a lease agreement, a check for the lease amount, and the Application for Temporary Change. He signed the application and returned it to me. I returned the signed application to your Cedar City office.

Mr. Fortier did not make me aware of his pending change application, No. a17706, involving 6 acre feet from 71-3683 and 71-3900. However, upon closer inspection of the temporary change, No. t28979, I found the following line in the Ownership Information section:

REMARKS: 5.0 AF under a17706. (71-3683 & 71-3900)

No one in the Cedar City office brought that line to my attention or made me aware of its implications or potential problems.

To help resolve the duplicate use issue, I am willing to release the 5 acre feet that I am leasing from 71-3683 and 71-3900 if Mr. Fortier is also willing to modify our lease agreement. I usually lease a few acre feet more than I actually use just to have a small safety margin, so we can consider these 5 acre feet as part of the safety margin, and that they have not been used for irrigation this year.

Please let me know if I need to do anything further.

Sincerely,



Chandler Whitelaw
President

(435) 586-0157 Home
(435) 559-7731 Cellular

cc. Mr. Quincy E. Fortier
Mr. Kerry Carpenter, Cedar City Office